SUPREME COURT OF THE UNITED STATES.

No. 34.

JOHN ZACHARIE AND WIFE, PLAINTIFFS IN ERROR,

vs.

HENRY FRANKLIN AND WIFE.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR EAST LOUISIANA.

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Langtree & O'Sullivan, Print.

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Langtree & O'Sullivan, Print.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana.*

Be it remembered that on the twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-six, into this court came Henry Franklin, of the State of Mississippi, by his attorney, Alfred Hennen, esq., and filed the following petition, to wit:

To the Hon. Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana.

The petition of Henry Franklin, suing as well for himself as for his wife Sarah Franklin, both residents and citizens of the State of Mississippi, respectfully shows:

That, on the 17th July, 1819, John Milah, then a citizen of the State of Louisiana, and therein residing, sold to your petitioner the following negroes, to wit: One negro woman named Neemy, one negro boy named John, one negro boy named Sam, one negro boy named Nels, one negro girl named Harriet, and one negro girl named Jenny, these last five being the children of the aforesaid Neemy; also all the cattle, hogs, and together with the household and kitchen furniture then to him belonging, as will further appear from the original bill of sale thereof, for the sum of twenty-eight hundred dollars, cash, in hand, paid by your petitioner to him, the said Joseph Milah, which original bill of sale was duly recorded in the notarial office of James McKne, notary public for the parish of St. Helena, in the State of Louisiana, on the 23d July, 1819, as the whole will appear by the original hereto annexed, to make part of this present petition. By the said sale the said property was to remain with the said J. Milah until his death; but he the said J. Milah departed this life in July, 1834, in the parish of St. Tammany, and your petitioner is now entitled to the said negroes, with the increase thereof, the cattle, hogs, furniture, and other property as aforesaid. Your petitioner further shows, that the said two negro women above named, Harriet and Jenny, have, since the said 17th July, 1819, had several children, who are now with them.

And your petitioner further shows, that the said slaves, with the children aforesaid, nine in number, and the other property in the said bill of sale mentioned, are now in the possession of Letitia Zacharie, and her husband John Zacharie, citizens of the State of Louisiana, residing in the parish of St. Tammany, within the eastern district of Louisiana aforesaid; who hold and detain the same illegally from your petitioner, and have refused, tho' thereto amicably requested, to deliver the same up to your petitioner, to the damage of your petitioner five thousand dollars.

And your petitioner has been informed and verily believes, that the said Letitia Zacharie, and her husband John Zacharie, have attempted to run off with the said slaves and property, and to take the whole away out of the jurisdiction of your honorable court; and your peti-

tioner verily believes, that the said slaves and property will be taken away from the State by the said John Zacharie, and his wife the said Letitia Zacharie, unless restrained by the order of this court, and the sequestration of the said slaves and property, in order to defraud your petitioner of his just rights thereto.

Wherefore your petitioner, a citizen of the State of Mississippi, prays that the said John Zachrie, and his wife the said Letitia Zachrie, citizens of the State of Louisiana, may be cited to appear and answer this petition, and may be condemned to deliver up to your petitioner the aforesaid slaves, with their children, and the aforesaid cattle, horses, hogs, household and kitchen furniture, of the value of five thousand dollars, and to pay your petitioner five thousand dollars damages for their illegal detention of the same, and for the hire and occupation of the same, with all such other and further relief as the nature of the case may require, and to equity and justice may appertain, with costs of court.

And your petitioner prays, that the said slaves and property may, in the mean time, be sequestered by order of your honorable court, to abide the judgment thereof.

(Signed) ALFRED HENNEN,
Atty. for petitioner.

Wm. Spring, agent of the petitioner, being duly sworn, doth depose and say, that all and singular the allegations in the foregoing petition are true; that the said property belongs to the petitioner, and he has been informed and verily believes, the defendant will remove the same out of the jurisdiction of this court, if not restrained.

(Signed) WM. SPRING.

Sworn to and subscribed before me, this 20th January, 1836.

(Signed) DUNCAN N. HENNEN,
Clerk.

Bill of sale attached to petition.

STATE OF LOUISIANA, *Parish of St. Helena.*

Know all men to whom these presents may come, that I, Joseph Milah, have this day bargained, sold, and delivered unto Henry Franklin, his heirs, executors, administrators, and assigns, six negroes, namely: One negro woman named Neemy, one boy, do. John; one do. Sam; one do. Nels; one negro girl named Harriet; one do. Jenny; together with all of my cattle, hogs, horses, household and kitchen furniture, for the sum of twenty-eight hundred dollars, to me in hand paid; which property I do warrant and defend from me, my heirs, executors, and assigns, to him, his heirs, executors, administrators, and assigns, forever.

In witness whereof, I have hereunto set my hand and seal this 17th day of July, 1819.

(Signed) his JOSEPH ⋈ MILAH. mark

Test:
WM. MCMICHAEL,
JOEL OTT, [L. S.]

The condition of the above bill of sale is such that the above mentioned property remain in my possession so long as I live, and after my body is consigned to the grave to remain as above mentioned in the above bill of sale.

(Signed) JOSEPH his ✕ mark MILAH.

Test:
WILLIAM MCMICHAEL,
JOEL OTT.

(Endorsed.)

I certify the within to be truely recorded in register, in page 55, according to the law and usage of this State. In faith whereof, I grant these presents under my signature, and the impress of my seal of office at St. Helena, this 23d day of July, 1819.

(Signed) JAMES McKIE. [SEAL.]

Judge's order.

Let a writ of sequestration issue, as prayed for, on the plaintiff filing his bond, approved by me, for ten thousand dollars, to answer damages.

(Signed) SAM'L H. HARPER.
Judge U. S.

Whereupon, the following citations issued from the clerk's office:

The President of the United States of America, to the marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to summon John Zacharie so that he be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans on the third Monday of February, 1836, to answer the complaint of Henry Franklin, and that he do file his defence or answer with the clerk of said court on or before the same, or judgment will be given against him by default: and have you then and there this writ.

Witness, the Hon. Sam'l H. Harper, judge of the said court at the city of New Orleans, this 23d day of January, 1836, and 60th year of the independence of the United States.

DUNCAN N. HENNEN, *Clerk.* [SEAL.]

Marshal's return.

Received this citation on the fourth day of February, and not in time to serve and make return.

WM. SPRING,
Deputy Marshal.

Feb'y 4th, 1836.

The President of the United States of America, to the marshal of the eastern district of Louisiana or to his lawful deputy, greeting:

You are hereby commanded to summon Letitia Zacharie, so that she be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans, on the 3d Monday of February, 1836, to answer to the complaint of Henry Franklin, and that she do file her defence, or answer, with the clerk of said court on or before the same, or judgment will be given against her by default: and have you then and there this writ.

Witness, the honorable Sam'l H. Harper, judge of the said court at the city of New Orleans, this 23d day of January, 1836, and 60th year of the independence of the United States.

(Signed) DUNCAN N. HENNEN, *clerk.*

Marshal's return.

Received this citation on the fourth day of February, 1836, and not in time to serve and make return.

(Signed) WILLIAM SPRING,
Deputy Marshal.

Feb'y 4th, 1836.

And, afterwards, on the ninth day of February, A. D. 1836, the following citation issued from the clerk's office, to wit:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to summons John Zacharie, so that he be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans, on the third Monday in May, 1836, to answer the complaint of Henry Franklin; and that he do file his defence, or answer, with the clerk of said court, on or before the same, or judgment will be given against him by default: and have you then and there this writ.

Witness, the honorable Saml. H. Harper, judge of said court at the city of New Orleans, this ninth day of February 1836, and 60th year of the independence of the United States.

(Signed) WM. B. OAKS,
Deputy Clerk.

Marshal's return.

Served copy of the within citation and copy of the plaintiff's petition on John Zacharie, one of the defendants, March 5th 1836, in the city of New Orleans.

(Signed) WILLIAM SPRING,
Deputy Marshal.

And, on the twenty-third of January, above mentioned, the following writ of sequestration was also issued from the clerk's office, to wit:

The President of the United States of America, to the marshal of the eastern district of Louisiana, greeting:

HENRY FRANKLIN *vs.* ZACHARIE & WIFE.

You are hereby commanded to sequester the slaves and other property mentioned in the accompanying petition now in the possession of the defendant in this case, and the same so sequestered, you will take into your possession, and them safely keep until the further order of this court.

Witness, the hon'ble Saml. H. Harper, judge of the said district, this twenty-third day of January, in the year of our [SEAL.] Lord 1836, and 60th year of the independence of the United States.

(Signed) WM. B. OAKS,
Deputy Clerk.

CLERK'S OFFICE, U. S. DISTRICT COURT.
New Orleans, March 5th, 1836.

I hereby certify the foregoing to be a true copy of the original of record in this office.

(Signed) WM. B. OAKS. [SEAL.]

Endorsed—Copy of return to original writ, now in the hands of William Spring deputy marshal. "Received this writ of sequestration on the fourth day of February 1836, and served the same on the 18th day of February, 1836." The amount of property sequestered as follows, to wit: one negro woman named Neemy, one negro man named Johns, one negro man named Nelson, one negro man named Sam, one negro woman named Harriet, one negro woman named Jenny; also seven children, names as follows: Mary, Eveline, Rial, Bob, Isaac, Ann and Sam; also one ox wagon, one feather bed, and one bedstead.

New Orleans, March 5th, A. D. 1836.

(Signed) WM. SPRING,
Deputy Marshal.

And, afterwards, on the fifteenth day of February, 1836, John and Letetia Zacharie, by their attorneys, John Slidell and M. G. Penn, esqrs., came into court, and filed the following answer, to wit:

To the honorable the district court of the United States for the eastern district of Louisiana.

The answer of John Zacharie and Letitia his wife, to the petition of Henry Franklin, respectfully shows that they deny all and singular the allegations in said petition contained, excepting such as are hereinafter specially admitted. They say that true it is your respondent, Letetia Zacharie, is in possession of the negroes referred to in the aforesaid petition, but they aver that they are so possessed by her, in her capacity of tutrix of her minor children, John & Josiah, who are

the lawful proprietors thereof, by a just title, to wit, by inheritance, from their father Joseph Miley; they say that they deny that the writing attached to the plaintiff's petition was ever signed or executed by John Miley, and of that execution and signature they require strict proof; that if ever so signed and executed, it was done in error, and through the false and fraudulent representations of the plaintiff, and that no consideration was ever given or received therefor; that, if said writing was ever signed or executed by John Miley, the same was fictitious and collusive, intended to cover or conceal a disguised donation of the slaves therein mentioned, and as such null and void, not having been made with the formalities required by law; they pray for a trial by jury; that the petition of the plaintiffs be dismissed with costs, and that they have all other and further just and equitable relief.

(Signed) M. G. PENN.
JNO. SLIDELL.

And, afterwards, on the 5th day of March, 1836, the following supplemental answer was filed, on behalf of the defendants, to wit:

The defendants, for supplement and amendment to the answer by them filed, now say that at the time the alleged sale, under private signature, to the plaintiff's petition annexed, purports to have been executed, Joseph Miley had neither children nor descendants actually living, and that legitimate children, to wit, the minors John & Josiah Miley of the said John Miley, have since been born, and are now living.

(Signed) JNO. SLIDELL.
M. G. PENN.

And, afterwards, on the 5th of March, 1835, the following entry was made of record, to wit:

Henry Franklin vs. *John Zacharie & wife.*

On motion of John Slidell, esq., of counsel for the defendants, and with the consent of plaintiff's counsel, ordered that he have leave to file an amended answer; and the parties being ready to proceed to trial thereupon came a jury, who were sworn well and truly to try the issue joined between the parties, and a true verdict give according to the evidence, to wit, C. Firlmen, W. P. Avis, Ralph Hubbard, George Kline, James Armour, J. J. Hall, C. Darcantel, C. Flood, G. Tunstall, C. Samory, James Mooney, and E. V. Jourdain; when after hearing the evidence in part, at 3 o'clock P. M. the court adjourned, until Monday morning at 10 A. M., the further consideration of the cause.

And afterwards, on the 7th day of March, 1836, the following entry was made of record, to wit:

Henry Franklin vs. *John Zacharie & wife.*

On this day the consideration of this cause was resumed by the court, and jury empannelled on Saturday last; when, after hearing the

evidence and arguments of counsel, they retired under the charge of the court to consider of their verdict, and soon returned the following verdict, which was ordered to be recorded, and is in the words and figures following, to wit:

Verdict for the plaintiff.

New Orleans 7th February 1836.
(Signed) JAMES ARMOUR FOREMAN.

And, afterwards, on the 10th day of March, 1836, the following entry was made of record, to wit:

Henry Franklin, vs. *John Zacharie & Wife.*

On motion of J. W. Smith, esq., in behalf of plaintiff's counsel, it is considered by the court that judgment be entered up in conformity with the verdict of the jury in favor of the plaintiffs and against the defendants, for the possession of the slaves and property in the petition mentioned, with costs of suit.

And, on the trial above mentioned, the following documents were filed in evidence, to wit:

Transcript of proceedings in probate court of the parish of St. Tammany.

Be it remembered, that, on the fifth day of August, 1834, Mrs. Letitia Shetton, widow of Joseph Miley, deceased, came into the probate court of the parish of St. Tammany, and State of Louisiana, by her attorney Jesse R. Jones, esq., and filed her petition in the following words and figures, viz:

To the hon'ble Lyman Briggs, judge of the court of probates, in and for the parish of St. Tammany, State of Louisiana.

The petition of Letitia Shetton, widow of Joseph Miley, deceased, late of this parish, respectfully represents that said Joseph Miley departed this life on the 20th of the month of July, of the present year, leaving some property, and leaving one legitimate son, about two years old, named John, the child of your petitioner, of which she is the natural tutress. She, therefore, prays that she may be confirmed as the natural tutress of said child, and that an under tutor may be appointed. Your petitioner further shows that she is in a state of pregnancy by said Miley, she therefore prays that a curator may be appointed to represent the interest of said unborn child, and that such other and further proceedings may take place as the law requires, and as, &c.

JESSE R. JONES,
For petitioner.

(Endorsed.) No. Estate of Joseph Miley.—Let petitioner be confirmed and sworn as tutress of her minor son John, and let Elias H. Murray be appointed and sworn as under tutor to

said minor, and let him also be appointad curator to represent the interest of the unborn child.

(Signed) LYMAN BRIGGS,
Parish Judge.

August 5th, 1835.

(Oaths.) STATE OF LOUISIANA, *Parish of St. Tammany.*

I, Letitia Shetton, widow of Joseph Miley, deceased, do solemnly swear that I will faithfully do and perform all the duties incumbent upon me, as natural tutrix to the minor child John Miley, to the best of my abilities and understanding agreeably to law, so help me God.

her
LETITIA ⋈ MILEY.
mark

Sworn to and subscribed before me, August 5th, 1834.
LYMAN BRIGGS,
Parish Judge.

STATE OF LOUISIANA, *Parish of St. Tammany.*

I, Elias H. Murray, do solemnly swear that I will faithfully do and perform all the duties incumbent upon me as under tutor to the minor John Miley, to the best of my abilities and understanding, agreeably to law, so help me God.

ELIAS H. MURRAY.

Sworn and subscribed before me, August 5th, 1834.
LYMAN BRIGGS,
Parish Judge.

STATE OF LOUISIANA, *Parish of St. Tammany.*

I, Elias H. Murray, do solemnly swear that I will faithfully perform all the duties incumbent on me as curator to the unborn child of Joseph Miley, agreeably to law, so help me God.

ELIAS H. MURRAY.

Sworn and subscribed before me, August 5th, 1834.
LYMAN BRIGGS,
Parish Judge.

Petition for inventory.

To the hon. Lyman Briggs, judge of the court of probates, in and for the parish of St. Tammany, State of Louisiana.

The petition of Letitia Shetton, widow of Joseph Miley, deceased, and natural tutress of his minor child, respectfully represents that she has been confirmed and sworn as natural tutress to said minor, and caused an under tutor to be appointed, and also a curator to represent the unborn child of said deceased. She prays that appraisers be ap-

pointed, and an inventory of the property belonging to the succession of said deceased may be made agreeably to law; and as, &c.

JESSE R. JONES,
Att'y for petitioner.

(Endorsed.) No. Estate of John Miley.—Let John Lender and Saille Baham be appointed and sworn as appraisers, and let an inventory be made.

LYMAN BRIGGS,
Parish Judge.

August 5th, 1834.

Inventory.

STATE OF LOUISIANA, *Parish of St. Tammany.*

Be it known and remembered, that, on this fifth day of August, in the year of our Lord one thousand eight hundred and thirty-four, and in the year of the independence of the United States of America the fifty-ninth, in conformity to an order of the court of probates for this parish, and at the request of Mrs. Letitia Shetton, widow of late Joseph Miley, deceased, and natural tutrix of the minor John Miley, and in her presence and in presence of Elias H. Murray, under tutor to said minor and curator to the unborn child of said deceased, assisted by John Lanier, Saille Baham, two free-holders, inhabitants of this parish, duly appointed and sworn as appraisers, and in presence of V. Bennet and John Milluam, two inhabitants of full age, called as witnesses, I, Lyman Briggs, judge of the aforesaid parish, in my capacity of notary public, proceeded to make an inventory of the property belonging to said Joseph Miley, deceased, commencing at the last residence of deceased:

First: negro man slave named Sam, aged about twenty-eight years, with his mother, named Neemy, very old, valued together at the sum of eight hundred and twenty-five dollars - - - - - $825

Second: negro man slave named Nelson, aged about twenty-five years, valued at eight hundred dollars, say - - - - - - - 800

Third: negro man slave named John, aged thirty years, valued at eight hundred dollars - - - 800

Fourth: negro woman Harriet, aged about twenty-three years, with her children, Mary, a girl seven years; Eveline, a girl aged five years; Rial, a boy aged three years, and Robert, a boy aged one year; valued at the sum of one thousand one hundred and twenty-five dollars - - - - - 1,125

Fifth: negro woman named Jane, with her child; a girl aged four years named Polly Ann; valued together at six hundred and twenty-five dollars - - 625

Sixth: three yoke of oxen, valued at one hundred and twenty dollars - - - - 120

Seventh: one wagon, valued at eighty-five dollars -	85	
Eighth: two steers, half broke, valued at thirty dollars -	30	
Ninth: two steers unbroke, valued at twenty dollars -	20	
Tenth: young mare, valued at thirty-five dollars -	35	
Eleventh: old mare, valued at twenty-seven dollars and fifty cents - - - - - -	27	50
Twelfth: four cows, valued at forty dollars - -	40	
Thirteenth: one cow and yearling, valued at twelve dollars	12	
Fourteenth: five head of stock cattle valued at twenty dollars - - - - - -	20	
Fifteenth: stock of gentle hogs, valued at forty-nine dollars fifty cents - - - - -	49	50
Sixteenth: the crop of corn valued to the sum of two hundred and twenty dollars - - -	220	00
Eighteenth: rice, potatoes and fodder, valued at forty dollars - - - - - -	40	00
Nineteenth: improvement or right of possession of land, valued at the sum of one hundred and twenty-five dollars	125	00
Twentieth: two lock chains, valued at four dollars -	4	00
Twenty-first: three axes, valued at the sum of five dollars and twenty-five cents - - - - -	5	25
Twenty-second: two shovel ploughs, gears, &c., valued at four dollars twenty-five cents - - -	4	25
Twenty-third: saddle and blanket, valued at four dollars	4	00
Twenty-fourth: pots, ovens, &c., valued at seven dollars	7	00
Amounting in the whole to the sum of five thousand and twenty-nine $\frac{50}{100}$ dollars, - - - -	$5,029	50

which being all the property we can find belonging to said succession, we have closed and signed the same, the said widow and tutress declaring on oath that she knows of no other property belonging to said succession, and promising if she shall hereafter find any that she will account for the same; that although a community existed between her and the deceased, she does not claim any thing on that account, believing that nothing was acquired. She declares that she has no estate of her own, and is therefore entitled to one-fifth of the estate of her deceased husband in usufruct; which she claims to keep and retain possession of the whole of said estate as belonging to her minor child John Miley, and her other child yet to be born, and all the parties and witnesses have signed their names, date above.

JOHN LANIER,
SEVILLE BAHAM,
her
LETITIA ⋈ MILEY,
mark
ELIAS H. MURRAY,
V. BENNET,
JOHN MILLEON.
LYMAN BRIGGS,
Parish Judge.

AGAIN:

To the honorable Lyman Briggs, parish judge, in and for the parish of St. Tammany, State of Louisiana, and ex-officio judge of the probate court therein.

The petition of Mrs. Letetia Shetton, widow of the late Joseph Miley, deceased, residing and living in the aforesaid parish of St. Tammany, respectfully represents, that your petitioner has in contemplation to unite herself shortly in the holy bond of matrimony with Mr. John Zacharie, residing and living in the aforesaid parish of St. Tammany; that she is desirous of retaining the tutrix to her minor children, the lawful issue of her marriage with the said John Miley, deceased, viz: John Miley, aged about three years, and Josiah Miley, aged about seven months. Your petitioner, therefore, prays that a meeting of the relations and friends of said minors may be convoked agreeably to law, to take into consideration the interest of the same, and that their advice and consent as to the propriety of granting the prayer of your petitioner be had in the premises; and, after all due proceedings being had, that your petitioner may be retained in her capacity as natural tutrix to her said minor children agreeably; and your petitioner, in duty bound, will ever pray, &c.

her
LETETIA ⋈ SHETTON.
mark

Witness:
M. G. PENN.

Endorsed—Succession of Joseph Miley deceased.—Mrs. Letetia Miley's petition for permission to marry, and retain tutorship of her minor children.

Let the prayer of the petitioner be granted, and let a meeting of the relations and friends of said minors take place before me at my office, in the town of Covington, in my capacity as notary public, on Saturday, the 9th day of May, 1835; let the under tutor be notified, and as there are no blood relations of the said minors within 30 miles distant, let the following persons, all friends of said minors, compose said meeting: E. M. Terrel, James Ruddock, H. G. Penn, Moses Eastman and E. H. Hedge.

Given under my hand, May 6th 1835.

LYMAN BRIGGS,
Parish Judge.

AGAIN:

THE STATE OF LOUISIANA, *Parish of St. Tammany.*

To Mr. Elias H. Murray of said parish:

You are hereby cited and admonished to be, and personally appear at my office in the town of Covington, on Saturday the 10th instant, at eight o'clock in the forenoon, to deliberate on the interest of the minor children of Joseph Miley, late of this parish, deceased.

Given under my hand and seal, this 6th day of May, A. D. 1835.

LYMAN BRIGGS, *Parish Judge.*

Endorsed.—Received this citation, the 5th day of May, 1835, and served it the same day, by giving him a copy in person.

(Signed) OBED KIRKLAND.
Duputy Sheriff.

Filed May 7th, 1835.

LYMAN BRIGGS, *Parish Judge.*

Oath of members of family meeting.

We, Elijah M. Terrell, James Ruddock, Alexander Penn, Moses Eastman, and Edward H. Hedge, do solemnly swear that we will faithfully, and impartially deliberate and advise, to the interest of the minor children of Joseph Miley, late of this parish deceased, to the best of our judgments, so help us God.

E. M. TERRELL,
JAMES RUDDOCK,
MOSES EASTMAM,
E. H. HEDGE,
A. G. PENN

Sworn and subscribed before me, this 9th day of May A. D., 1835.

LYMAN BRIGGS, *Parish Judge.*

Family meeting.

STATE OF LOUISIANA, *Parish of St. Tammany.*

Be it known and remembered, that, on this ninth day of May, in the year of our Lord, one thousand, eight hundred and thirty five and in the year of the independence of the United States of America, the fifty ninth, in pursuance of an order of the honorable the probate court in and for the said parish, bearing date the sixth instant, calling a family meeting to deliberate upon the interest of the minor children of Joseph Miley, late of this parish, deceased, John and Josiah, in relation to the propriety of authorizing their mother, and natural tutrix, Mrs. Letitia Shetton, widow of said deceased, to contract a second marriage, by intermarrying with John Zacharie, a citizen of this parish and to be retained in her capacity of tutress to her said minor children, personally came and appeared Elijah M. Terrel, Alexander G. Penn, Moses Eastman, Edward H. Hedge, and James Ruddock, friends of said minors, all domiciliated in the parish of St. Tammany, and of lawful age, who were in default of blood relations of said minors, cited in as friends, and all being duly sworn according to law, to deliberate truly and justly, upon the interest of said minors, aided and assisted by Elias H. Murray, under tutor to said minors, before me, Lyman Briggs, parish judge, and ex-officio notary public, in my capacity as notary public, and resolved themselves into a family meeting for the purposes aforesaid. The said family meeting, after having taken into consideration the interest of said minors, in relation to the propriety of permitting, and authorizing the court, to grant the prayer of the petition of Mrs. Letitia Shetton, widow of said deceased, Joseph Miley, and natural tutrix to said minor children, have unanimously come to the conclusion that it would be to the interest, and advantage of said minors, that the mother should be retained in her

capacity of natural tutrix, although she contract a second marriage, and therefore advise and consent that she shall contract a second marriage, and that she intermarry with John Zacharie, and that she be retained as the tutrix aforesaid, according to law.

Thus done, and passed on the day and date above written, in presence of E. P. Ellis and Martin G. Penn, witness, and the parties have all signed these presents, and the same being approved of by the under tutor, who has also signed in presence of said witnesses, and me the judge aforesaid, in my capacity as notary public.

ELIAS H. MURRAY,
E. H. HEDGE,
E. M. TERREL,
MOSES EASTMAN,
JAMES RUDDOCK.
H. G. PENN.

Witness :
H. G. PENN,
E. P. ELLIS.

LYMAN BRIGGS.
Parish Judge.

STATE OF LOUISIANA, *parish of St. Tammany.*

I, Lyman Briggs, parish judge of the aforesaid parish of St. Tammany, do hereby certify the foregoing, to contain a true, and faithful transcript of all the papers of file in my office, in the matter of the succession of Joseph Miley, deceased. In faith whereof, I grant these presents under my signature and the impress of my official seal, this 15th day of February A. D., 1836.

[SEAL] LYMAN BRIGGS.
Parish Judge.

STATE OF LOUISIANA, *parish of St. Tammany.*

Know all men by these presents, that I, Joseph Miley, on the seventeenth day of July, 1834, have made my last will and testament, and disposed of my property in the manner and form following, being in my proper senses, according to the law of nature, and have constituted Elias H. Murray, my proper and lawful attorney, to enforce this my last will, according to the manner and form, hereinafter mentioned, (viz:) That Mrs. Sarah Franklin, shall have and possess one negro woman Harriet and her offspring, with a negro man called Nelson; that for the natural love, and affection, which I bear to a certain negro man named Sam, and his mother named Nema, and for divers other causes, I hereby give and constitute their freedom, to be hereafter emancipated; and that said Elias H. Murray, shall be my attorney, to prosecute and claim their the said freedom of said slaves, the same as if I myself were now present; and for and in consideration of the foregoing items, do give, grant, and confirm, unto the said parties named, all the rights and privileges which they the said parties heretofore named, should, and ought to have, from the consideration of the foregoing premises, to have, and to hold the same, until the breath shall leave this natural body, and the same he doth bind himself, his heirs, administrators, and assigns forever, it being

done in the presence of Eli Robertson, John Diicks, Daniel Tyson, and others, the day and date heretofore written. Done and confirmed, this 17th of July, eighteen hundred and thirty four.

his
JOSEPH ⋈ MILEY.
mark

Witnessed by
ELI ROBERTSON,
JOHN DICKS,
SAMUEL BRENAN,
JOHN VENDER.

STATE OF SOUTH CAROLINA, *Richland District:*

To all people, to whom this present shall come, I, Joseph Miley, of the district aforesaid, send greeting:

Know ye that I, the said Joseph Miley, for divers good causes, and valuable considerations, me hereunto moving, have given and granted, and by these presents, do give, grant, and confirm, unto Sarah McGuire, of the said district, one negro wench, by the name of Manama, also, one negro boy, by the name of John, together with all and singular my goods, chattels, household stuff, and all other my substance, in whose hands, custody, or keeping, soever the same are, or can, or may be found, to have, and to hold, all and singular, the said goods, chattels, household stuff, with the said negro wench and boy, and whatsoever of me, the said Joseph Miley, unto the said Sarah McGuire, her executors, administrators, and assigns, from henceforth, to her, and to their own proper use, and uses thereof and therewith to do, order, and dispose at her, or their wills, and pleasure, as of their own proper goods, and chattels, freely, and peaceably, and quietly, without any manner of lett, trouble, or damage, of me the said Joseph Miley, or any other person, or persons whatsoever. Of all which premises, I the said Joseph Miley, have put the said Sarah McGuire in full and peaceable possession by virtue hereof. In witness whereof, I, the said Joseph Miley, have hereunto set my hand and seal, this 11th day of July, 1805.

his
JOSEPH ⋈ MILEY. [SEAL.]
mark

Signed, sealed, and delivered, in the presence of

ROBERT THOMPSON,
WM. SMILEY.

Personally appeared before me, Wm. Smiley, and made oath that he saw Joseph Miley, sign, seal, and deliver the above instrument of writing, for the uses and purposes within mentioned. Sworn this 11th day of July, 1805.

WM. SMILEY.

ROBERT THOMPSON, *J. P.*

STATE OF SOUTH CAROLINA, *Richland District:*

I, James S. Guignard, clerk of the district aforesaid, and ex-officio of mesne conveyances, do hereby certify that the writing contained on the preceeding page of this sheet of paper, doth contain a true copy taken from record-book F, pages 373 and 374, bearing date 10th December, 1805.

Given under my hand and the seal of the court, at Columbia, this [SEAL.] 25th day of April, 1835.

JAMES S. GUIGNARD,
Clerk of court and Register of Mesne conveyances Richland district

THE STATE OF SOUTH CAROLINA:

By his excellency George McDuffie, governor and commander-in-chief in and over the State aforesaid.

[State Seal.] (Signed) GEORGE McDUFFIE.

To all to whom these presents shall come: Know ye that James S. Guignard, whose seal and signature appears on the annexed sheet of paper, was at the time of signing the same, and now is, clerk of the court, and register of mesne conveyances for the district of Richland, in the state, that his certificate is in due form, and by the proper officer; therefore, all due faith and credit and authority is, and ought to be had, and given to his proceedings and certificates as such.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of State in the town of Columbia, on the twenty-fifth of April, in the year of our Lord one thousand eight hundred and thirty-five, and in the fifty-ninth year of the independence of the United States of America.

By the Governor:

B. H. SAXON,
Secretary of State.

STATE OF LOUISIANA, *Parish of St. Tammany.*

Know all men by these presents, that we, Joseph Miley and James B. McCay, are held and firmly bound unto A. B. Roman, governor of the State of Louisiana, in the just and full sum of five hundred dollars, well and truly to be paid to him, or to his successors in office, for which we bind ourselves jointly and severally by these presents, dated this eleventh September, A. D. 1831.

Now, the condition of the above obligation is such, that whereas the said Joseph Miley has applied for licence to marry Miss Letitia Shetton, of this parish; now if there exist no legal impediment to said marriage then the obligation to be void and of no effect, else to remain in full force and virtue in law.

(Signed) JOSEPH ✕ MILEY,
JAMES B. McKAY,
N. B. MITCHELL.

License.

STATE OF LOUISIANA, *Parish of St. Tammany:*

To Lemuel Thompson, esquire:

You are hereby authorized and required on the application of the parties, to join in the ordinance of matrimony, Joseph Miley and Letitia Shetton, and this shall be your authority for so doing.

Given under my hand and seal of office this 17th day of September, A. D. 1831.

JESSE R. JONES, [SEAL.]
Parish judge.

Certificate of Marriage.

I hereby certify that the two was duly joined in the ordinance of matrimony, in the presence of those, by me the 25th September, 1831.

JOHN HEADEN,
J. C. BANKSTON,
LEMUEL THOMPSON, *J. P.*

Certificate from the record of marriages.

No. 330.

Joseph Miley to Letitia Shelton.—On the seventeenth of September bond was given and license issued, addressed to Lemuel Thompson, esquire, who returned certificate of having performed the ceremony, 25th September, 1831.

June 5th, 1832.

(Signed) LYMAN BRIGGS,
Parish judge.

I, Lyman Briggs, parish judge of the parish of Tammany, in the State of Louisiana, do hereby certify that the foregoing contains a true copy of all the papers of file and of record in my office in relation to the marriage of Mr. Joseph Miley with Mrs. Letitia Shetton.

In faith whereof, I grant these presents under my signature, and the impress of my official seal this 22d day of January, A. D. 1836.

[SEAL.] LYMAN BRIGGS,
Parish judge.

And, at the trial aforesaid, the plaintiff filed the following bill of exceptions, to wit:

Henry Franklin vs. *John Zacharie and wife.*

Be it remembered that, at the trial of this cause, the defendants counsel offered parole evidence that no sum of money was paid as stated in the bill of sale annexed to the pleadings, and to prove that the sum had been obtained by fraud and through error, and was intended to cover a disguised donation of the slaves mentioned therein, and to contradict the declarations of the said act, to all which the

counsel for the plaintiffs objected and admitted the defendant to give parole evidence as offered aforesaid—the same was heard by the jury; to all which the plaintiff excepted in open court, before the jury retired to consider of their verdict. This his bill of exceptions is signed and sealed in open court, that the same may appear of record this 7th March, 1836.

(Signed) SAM'L H. HARPER. [SEAL.]

And also on the trial aforesaid the defendant filed the following bill of exceptions to wit:

Be it remembered, that on the trial of this cause the plaintiff offered in evidence an instrument in writing to his petition annexed and bearing date the 17th July, 1819, and purporting to be executed by Joseph Milah by the affixing of his mark, and offered to prove same by the evidence of William McMichael and Joseph Ott, whose signatures are affixed as subscribing witnesses, which instrument is made part of this bill of exceptions, the defendants objected to the introduction of said instrument and testimony on the ground: 1st, that being an instrument purporting to convey slaves, the same was null and void as not having been signed by the vendor, and that no parol proof could be admitted to prove its execution: 2, that a mark is not a signature within the provision of the laws of Louisiana, in relation to the conveyance of slaves: 3, that the instrument, containing a synalagmatic contract or mutual and reciprocal obligations, not being in the form of an authentic act was invalid because not made in as many originals as there were parties having a direct interest: 4, that the same was not signed by the vendee. But the court overruled the objections, and admitted testimony and instrument in evidence, to which decision the counsel for the defendant excepted, and tendered this, his bill of exceptions, which is admitted and signed by the court.

(Signed) SAML. H. HARPER, [SEAL.]
Judge.

And also, on the trial aforesaid, the defendant filed the following bill of exceptions, to wit:

Henry Franklin & wife vs. *John Zacharie & wife.*

Be it remembered, that on the trial of the above entitled suit, the plaintiffs offered in evidence an instrument in writing, bearing date 11th July, 1805, "State of South Carolina Rushland district," purporting to have been executed by Joseph Miley, as a gift or donation of two slaves, and certain goods and household furniture to one Sarah McGuire to the introduction of which defendants objected on the following grounds, viz:

1. Because the plaintiffs in their petition claim to have a title to the slaves referred to in their petition by virtue of a bill of sale to Henry Franklin, one of the plaintiffs, under date of the 17th July, 1819, and that they cannot offer evidence to establish title from any other source than that therein stated.

2. Because there is no evidence of the identity of the person by whom this instrument purports to have been executed, and James Milah, under whom plaintiff claims, nor of the slaves named in the petition.

But the court overruled the objection and admitted the testimony to which the counsel for the defendants objected, and tendered this bill of exceptions, which is admitted and signed by the court.

The court having admitted parol evidence on the part of the defendants to prove fraud and want of consideration, admitted the above testimony as rebutting evidence, especially as testimony had already been given, without objection, that a previous disposition of the property in question had been made in South Carolina, which testimony was oral and tended to prove a written transfer of the property in South Carolina.

(Signed) SAML. H. HARPER, [SEAL.]

And, afterwards, on the 10th day of March, A. D. 1836, the following entry was made of record, to wit:

Henry Franklin vs. *John Zacharie & Wife.*

On motion of the defendant's counsel, ordered that the plaintiff show cause on the 2nd day of the next term, (May term 1836,) why a new trial should not be granted in this case on the grounds on file.

And, on the same, day the following was filed by the defendant, to wit:

DISTRICT COURT OF THE U. S., *Eastern District of Louisiana:*

Henry Franklin & wife vs. *John Zacharie & wife.*

The defendants now move for a rule on the plaintiffs to show cause why a new trial should not be granted in the above entitled suit on the following grounds, viz:

1st. Because the instrument or writing under date 17th July, 1819, purporting to have been executed by Joseph Milah, by making his mark, and by which the slaves set forth in plaintiff's petition are conveyed, was illegally admitted to be put to the jury as evidence.

2d. Because the contract of sale sued on is clearly a simulated one, and in fraud of law then existing, and consequently is null and void.

3d. Because, that if the contract, or instrument in writing, was not in fact a sale, but simulated to cover a donation, it was null and void, because not made in due form of law, and moreover not accepted.

4th. Because, even if good as a donation, it was revoked by the birth of legitimate children to Joseph Miley.

5th. Because the retaining possession of the slaves by vendor, was a badge of fraud.

6th. Because, the instrument in writing purporting to have been executed by Joseph Miley the 11th July, 1805, in the State of South Carolina, was illegally admitted as evidence to the jury on the ground that plaintiff had alleged title, in their pleading, different from that contained in said instrument, and now consequently bound by their pleadings.

7th. Because, the verdict of the jury is clearly contrary to law, evidence, and the charge of the court.

(Signed) PENN, SLIDELL & HEDGE,
Atty's for Deft's.

And, afterwards, on the 16th day of May, 1836, the following entry was made of record, to wit:

H. Franklin vs. *John Zacharie & wife.*

The rule heretofore taken in this case by the defendant on the plaintiff to show cause why a new trial should not be granted, and made returnable on to-day, was, by consent of parties, continued until to-morrow.

And, afterwards, the 17th day of May, 1836, the following entry was made of record, to wit:

H. Franklin vs. *John Zacharie & wife.*

The rule continued from yesterday in this case for a new trial came on to-day, and was argued by H. Hennen, esq., for plaintiff, and John Slidell, esq., for defendant, whereupon the court took time to consider.

And, afterwards, on the 19th day of May, 1836, the following entry was made of record, to wit:

Henry Franklin vs. *John Zacharie & wife.*

The court having maturely considered the application for a new trial, made on behalf of the defendants, now order, in conformity with the opinion on file, that the motion be overruled.

Opinion of the Court.

HENRY FRANKLIN *vs.* JOHN ZACHARIE & WIFE.

This is a motion for a new trial. The suit was commenced to obtain the possession of certain slaves, who had been conveyed to the plaintiff in 1819, by one Milah, by an instrument under private signature, that is to say, it was executed by him by affixing his mark or cross (he being unable to write) and was attested by two subscribing witnesses who established the execution of the instrument on oath at the trial of the cause. It was proved on the trial that when he made this conveyance he was supposed to be on his death bed. He however recovered, and afterwards married a woman, who is now defendant's wife, by whom he had two children, who are now living. The wife of the plaintiff is the sister of his former wife who died childless. It was proved that he derived the property now in dispute through his former wife; and, therefore, it was contended one half of the community of goods between Milah and his first wife belongs to her sister, plaintiff's wife, as her heir by the laws of Louisiana. The first objection to the plaintiff's cause of action was that being an act of a private nature, and not signed by Milah in his own hand writing, but only acknowledged by his mark, could not be given in evidence.

In support of this objection the laws of France were invoked, by which it appears such an instrument is illegal and void. Some articles of our civil code were also read in which the distinction between authentic acts, and those of a private nature is recognized, the latter are required to be under "signature" and it was contended that a mark is not a signature. The great object of the law, in cases of this kind, is to ascertain the intention of a party when he makes a conveyance; and if that intention can be discoverd, either by his writing his name at length and in full, or by affixing his seal, his mark, or his paraph, the object of the law is equally attained. In ancient times the seal of a party, without any thing else, was sufficient, provided the identity of the seal could be shown. Among the Spaniards a paraph or flourish is received as proof of the execution of an instrument, and whatever may have been the policy of the law of France on this subject, whether it was to benefit public notaries or for some other reason it seems to me it would be subversive of too many rights acquired in this State to allow the objection to prevail. I, therefore, overruled it, and the instrument was given in evidence to the jury.

The defendants pleaded that the instrument was simulated; that it was made in fraud of law and without consideration, and on these points they cross interrogated the plaintiff's witnesses not, however, without objection being made to that course; but the court permitted the evidence to be given. Afterwards, the plaintiffs offered a deed of gift made in South Carolina in 1805, by the said Milah, in favor of plaintiff's wife, for the mother of these slaves and all his other property. To the introduction of this deed of gift the defendant objected as not forming any part of plaintiff's title, he not having declared on it as such. The court said it could not be given in evidence of *title*, but might be received as evidence to rebut the charge of fraud or collusion; or in other words, to show the intention of Milah from the earliest period, to give the property to the wife of the plaintiff. A witness, called for the defendant, stated that he was present a short time before the death of Milah, and was requested by him to write his will, and on being asked what was the substance of Milah's instructions to him on the subject, the counsel for the plaintiff objected to his giving any testimony on that point, saying, that he had then in court the written bequest of Milah drawn up by the witness, and insisted on producing that as the best evidence of Wilson's instructions. This was objected to by the counsel for the defendant, as not being clothed with the legal formalities of a will, and could not be received as such. The court said it was not offered as a will, but to support the previous declarations of Milah in favor of the plaintiff's wife, and as the other party had gone into the inquiry of his *intentions*, it was proper that the best evidence of those intentions should be given, and therefore the paper was admitted.

It thus appeared that as early as 1805, in South Carolina, to avoid some immaginary trouble, which Milah anticipated, he had given his property to plaintiff's wife; that in 1819, in Louisiana, to avoid a settlement of his affairs through the court of probates he had done

the same thing; and in 1834, two or three days before his death, he made a bequest in her favor, notwithstanding at the latter period he had a wife and two children. Where then, was the error or fraud committed by him? especially as it appeared that his second wife one of these defendants, knew of his disposition *knew of his disposition* of the property previous to her marriage with him. So much then, for his intentions and wishes on the subject. Were these intentions and wishes sanctioned by law? When he disposed of his property in South Carolina he had a right to do so, because by the laws of that State there are no *forced* heirs—a man may there dispose of his property ad libitum. In Louisiana, in 1819, he had the same right as to his share of the community of goods, having no heirs at that time. One-half of the property he could not divest, because that descended to the plaintiff's wife, the sister and heir of his former wife. In 1834, when he died, the new civil code was the law of the land, by which the birth of children after *donation* does not invalidate it in *toto*, as by the provisions of the old code was the case, but only sets it aside so far as the *legitime* of the children is concerned. Our civil code has been referred to, and a number of decisions under it, to show that all acts done in fraud of wives, children, and others, are nullities; but in the case before me the conveyance of this property at the time it was made in 1819 was not in fraud of any one, because at that time the parties now claiming were not in existence; therefore, I think all the authorities cited on this point do not apply to this case; nor can I perceive how he committed any fraud on the law by attempting to make such legal disposition of his property as would prevent the harpies of the law from seizing upon it. It was supposed in the argument on the motion for a new trial that the finding of the jury was in conflict with my charge to them. My charge to the jury was little more than a repetition of the points of law decided on the trial, leaving it to them to decide from the evidence whether or not the plaintiffs had made out such a case as entitled them to a verdict. Having decided that the instrument sued on was properly authenticated, that the party making it had a legal right to do so, both by the laws of Louisiana and South Carolina; that by the former *one-half* of his property belonged to the wife of the plaintiff, and by the latter the *whole* might be given to her; that by our law the half of the remaining moiety might be disposed of as the doner thought proper, thus making three fourths of the property as belonging to the plaintiffs by operation of law, and by the volition of the deceased, there was nothing left to the jury, but to dispose of the remaining fourth, and when they rendered a verdict for that too in favor of the plaintiffs I confess I at first thought their verdict erroneous in that respect, conceiving that Milah's children were entitled to that much. But it was in evidence that the defendants had been in the enjoyment of the property for a long time without rendering any compensation for it, and this point was urged upon the jury in the argument. I therefore presume that, in consideration of that circumstance, they gave the remaining fourth to the plaintiffs by way of damages, and in that view of the case I concur in their verdict. As there was

little or no disputes as to the *facts* of the case, the correctness of the verdict must depend on the points of law involved in it; and if they have been erroneously decided they will be corrected on appeal, for they are all stated in the bills of exception taken at the trial.

And, afterwards, on the 26th day of May, 1836, the following petition was filed on behalf of the defendant, to wit:

Henry Franklin vs. *John Zacharie & wife.*

UNITED STATES DISTRICT COURT, *Eastern District of Louisiana:*

The petition of John Zacharie and Letetia Shetton, wife of John Zacharie, defendants in the above entitled cause, respectfully shows that they are advised and believe that there is error to their prejudice in a certain final judgment, rendered against them, and as they feel aggrieved thereby they pray that a writ of error with a stay of execution, may be allowed to them on giving bond and security according to law.

(Signed) M. G. PENN,
JOHN SLIDELL.

Assignment of errors.

The court erred in admitting—objected to for the reasons stated in the bills of exceptions on file.

The court erred in refusing a new trial under the circumstances of the case as detailed in the reasons for overruling the motion for a new trial.

Judge's order.

Be it so on the petitioners entering into bond in the sum of eigh thousand dollars with Martin G. Penn, E. M. Terrel and John McDonald, and Wm. B. Addison, as securities, conditioned according to law.

(Signed) SAML. H. HARPER,
Judge U. S.

Whereupon, the following bond was taken, filed and recorded, to wit:

Know all men by these presents that we, John Zacharie and Letetia Zacharie as principals, and Martin G. Penn, Thos. G. Davidson, Wm. B. Addison, E. M. Terrel and John McDonald, as securities, are held and firmly bound unto Henry Franklin and Sarah Franklin his wife, their heirs and assigns, in the sum of eight thousand dollars lawful money of the United States, to which payment well and truly to be made, we and each of us, bind ourselves, our heirs, executors, administrators, jointly and severally by these presents, sealed with our seals, and dated this 28th day of May, A. D. 1836.

Whereas, the above bounden John Zacharie, and his wife, Letetia Zacharie, have this day appeared and filed their writ of error to the supreme court of the United States, from a certain final judgment, rendered in the court of the United States for the eastern district of

the State of Louisiana in a certain suit, wherein the said Henry Franklin and Sarah Franklin his wife, are plaintiffs, and the said John Zacharie and Letetia Zacharie are defendants.

Now, the condition of the above obligation is such, that if the said John Zacharie and Letetia Zacharie his wife, shall prosecute their said writ to effect and answer in case they fail to make good thier plea, and pay all damages and costs, then this obligation to be null and void, otherwise to remain in full force and virtue in law.

(Signed) JOHN his ⋈ mark ZACHARIE.

[SEAL] LETETIA her ⋈ mark ZACHARIE.

WM. B. his ⋈ mark ADDISON. [SEAL.]

JOHN McDONALD. [SEAL.]

M. G. PENN. [SEAL.]

THOMAS GREEN DAVIDSON. [SEAL.]

E. M. TERREL. [SEAL.]

Witness:
BOWLIN CHILDRESS, and
PARIS CHILDRESS.

CLERK'S OFFICE U. S. DISTRICT COURT, *Eastern District of Louisiana:*

I, Duncan N. Hennen, clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify the foregoing fifty pages to be a full and complete transcript of the record of the proceedings, evidence, pleadings, and documents relating to the case of Henry Franklin and wife against John Zacharie and wife, so fully as the same remains on file in this office.

Witness my hand and the seal of the court this day of 1836.

DUNCAN N. HENNEN,
Clerk.

I, Samuel H. Harper, judge of the United States district court for the eastern district of Louisiana, do hereby certify that Duncan N. Hennen, who certified the foregoing fifty pages, is now, and was at the time of so doing, clerk of the said court of the United States for the eastern district of Louisiana; that said certificate is in due form of law, and that full faith and credit are due to his acts as such.

Witness my hand and seal this 3*rd* day of June, A. D. 1836.

[SEAL.] SAM. H. HARPER,
Judge U. S.